

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 9122 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SARDAR BHILADWALA PARDI PEOPLES CO-OP BANK LTD -
Petitioner(s)
Versus
CO-OPERATIVE BANK OF A'BAD LTD & 1 -
Respondent(s)

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Appearance :

MR BS PATEL for Petitioner(s) : 1, MRS RANJAN B
PATEL for Petitioner(s) : 1,

MR SAURABH G AMIN for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 21/11/2006

ORAL JUDGMENT

1. The petitioner – original plaintiff has filed this petition under Article-227 of the Constitution of India challenging the order passed by the learned 3rd Joint Civil Judge (SD), Valsad in Special Civil Suit No.210 of 2002 below application Ex.24 dated 5.4.2005 whereby the application of the present petitioner – original plaintiff for production of a document was rejected.
2. This Court has issued rule on 12.5.2005 and ad-interim relief in terms of para-8(B) was granted.
3. Heard Mr.B.S.Patel, learned advocate appearing for the petitioner and Mr.Saurabh

G. Amin, learned advocate appearing for the respondent No.1. Despite the fact that the respondent No.2 was served nobody appears on behalf of the respondent No.2.

4. It is the case of the petitioner that the petitioner bank has obtained licence from the Reserve Bank of India. The petitioner has opened its account in the respondent No.1 bank at Bombay Branch. The petitioner bank issued a banking cheque bearing No.218896 for the amount of Rs.1,000/- in favour of one Mustak Ahmed. The bank has taken due care in issuing the cheque. The cheque had been printed on computer and a transparent cello tape was also affixed. It is also the case of the petitioner that the alteration took place in the cheque which was drawn by the petitioner bank and it was cleared for the amount of Rs.7,00,077/- for the amount of said banker's cheque. On inquiry, it was found that the cheque has been forged by

making alteration and figures and words have been changed from Rs.1,000/- to Rs.7,00,077/-. The petitioner bank incurred the loss to the tune of Rs.6,99,070/- and hence a suit was filed to recover the said amount from the defendant alongwith the interest at the rate of 18%. It is also the case of the petitioner that the respondent bank appeared and made a denial by filing written statement. As there was denial the petitioner bank submitted an application Ex.24 for production of original cheque lying with the respondent bank. The said application was rejected by the learned Judge on 5.4.2005 on the ground that it is the duty of the plaintiff to produce the documents on which the plaintiff puts reliance. It is this order which is under challenge in the present petition.

5. Mr.B.S.Patel, learned advocate appearing for the petitioner has submitted that as per

the provisions contained in Order-11 Rule-14 it is obligatory on the part of the learned trial Judge to allow the application moved by the present petitioner for production of the applicant bank's cheque which is in possession of the respondent No.1 bank. The application was wrongly rejected on the ground that the said application is premature and the duty is cast on the petitioner to produce the documents on which he wants to rely.

6. Mr.Saurabh G. Amin, learned advocate appearing for the respondent No.1 bank on the other hand has submitted that the order passed by the learned trial Judge is discretionary order which cannot be interfered with exercising the power under Article-227 of the Constitution of India. He has further submitted that as and when the evidence is led the said cheque can be produced by the respondent – bank and hence

it cannot be insisted at this stage that the respondent bank should produce the cheque at the behest of the petitioner.

7. After having heard the learned advocates appearing for the respective parties and after having gone through the impugned order as well as the submissions made by the learned advocates on behalf of the respective parties, the Court is of the view that there is no dispute that the impugned order is discretionary one. The discretion is however, required to be exercised judiciously. Looking to the peculiar facts of the present case and to render justice to the parties the Court thinks it just and proper to exercise its extraordinary powers under Article-227 of the Constitution of India. It is an admitted position that the original cheque is in possession of the respondent bank. The petitioner bank has already produced the xerox copy of the cheque. The petitioner

bank has come out with the case that the cheque of Rs.1,000/- was issued and it was altered from Rs.1,000/- to Rs.7,00,077/-, and this can be proved only by production of original cheque which is in possession of the respondent No.1 bank. Order-11 Rule-14 clearly states that the trial Court can pass the order directing the parties to produce the documents which are in their possession. When there is no denial of fact that the original cheque is in possession of the respondent bank the learned trial Judge was not justified in rejecting the application for production of the original cheque. Simply by production of evidence, it cannot be assumed that the contents of the document are true. An aggrieved party can certainly raise the disputes with regard to contents of the documents so produced.

8. Considering overall view on the matter, the Court directs the respondent No.1 bank

to produce the original cheque which is in its possession at the time when the evidence is led by the present petitioner. In the alternative, the respondent No.1 bank may not raise any objection if the xerox copy of the cheque produced by the petitioner - bank is sought to be exhibited.

9. With the aforesaid direction and observation the impugned order is hereby quashed and set aside and the petition is accordingly allowed. Rule is made absolute to the above extent. Since the suit is of 2002 the trial Court is directed to expedite the suit and dispose of the same as expeditiously as possible, preferably, on or before December, 2007.

(K. A. PUJ, J.)

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